



## Yale Review of Law and Social Action

Volume 1

Issue 1 *Yale Review of Law and Social Action*

Article 3

1971

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### Recommended Citation

Myron Moskowitz, *Rent Strikes and the Law: The Limitations of the Ann Arbor Experience*, 1 YALE REV. L. & SOC. ACTION (1971).

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## **Rent Strikes and the Law: The Limitations of the Ann Arbor Experience**

by Myron Moskowitz

19

**Mr. Moskowitz is Chief Attorney of the National Housing and Development Law Project, Earl Warren Legal Institute, Berkeley, California. The research reported herein was performed under a grant from the Office of Economic Opportunity, Washington, D. C. 20506. The opinions expressed herein are those of the author and should not be construed as representing the opinions or policy of any agency of the United States Government.**

The experience of the Ann Arbor rent strikers, as revealed by the preceding article, should be noted with interest by tenant union organizers throughout the country. These tactical uses of the law can stimulate local organizers to think of new ways to use the law to further their efforts in their own communities.

It is important to examine, however, factors peculiar to the Ann Arbor situation that tend to make those tactics less universally applicable than might be expected. These peculiarities should be especially important to organizers of low-income tenant organizations in slum neighborhoods.

First, the Ann Arbor rent strikers were mostly middle-class college students. This accounts for one of the strongest weapons of the strikers, their masses.

Because 1,200 tenants joined the strike, the Tenants Union was able to jam court dockets so that a very small proportion of eviction cases could come to trial. It was able to withhold an enormous amount of rent

(\$140,000) and hold this money in an escrow account for which landlords might be willing to negotiate. Finally, because of its numbers, the Tenants Union was able to obtain political support from some influential organizations and individuals.

Organizers of low-income tenant unions are not likely to be able to assemble this many participants in a single strike. Students are usually fairly resilient young people, without dependents. If a student is evicted, he can usually "crash" for a few nights or even a few weeks at a friend's home. A low-income family with four or five children, however, lacks this mobility. Also, students tend to be politically aware of the need for organizing large numbers of people in order to combat certain well-entrenched interests. Low-income people have not had the experience or the exposure that brings about this consciousness of the larger picture. This factor affects the number of organizers that can be recruited as well as the willingness of potential strikers to be organized.

Since organizing large numbers of people takes many man-hours, the number of organizers and the amount of time they can give is important. While local situations vary, students generally tend to have more time available than low-income people, who must work and raise families. Finally, organizers of low-income people must usually overcome a general fear among low-income people of taking any action that might upset the status quo and make their situation even worse. This is particularly true when that action involves challenging established authority, whether it be the welfare department, the police, or the landlord. Middle-class students are not so likely to be afraid.

Second, the strikers were blessed with the benefits of some of the best landlord-tenant legislation in the country.<sup>1</sup> Recent Michigan statutes provide that the landlord impliedly covenants that the premises are fit and that he will keep them in reasonable repair,<sup>2</sup> and that his substantial breach of these covenants is a defense to an eviction action for nonpayment of rent.<sup>3</sup> No other state has legislation

that appears to give tenants such a powerful weapon. A Michigan landlord may not retaliate against a tenant by evicting him because he has reported housing code violations to a government agency or "for any other lawful act arising out of the tenancy."<sup>4</sup> While a few states have retaliatory eviction statutes protecting the report of code violations,<sup>5</sup> only one other state<sup>6</sup> goes as far as Michigan in protecting other actions also. Finally, and perhaps most importantly, even if a Michigan tenant loses an unlawful detainer action, he cannot be evicted if he pays the rent due plus costs within ten days.<sup>7</sup> This crucial provision, found in few other states,<sup>8</sup> permits tenants to go on strike and test their defenses in court with the confidence that they cannot be evicted, so long as they save their rent money and a few extra dollars for potential costs.

Armed with this legislation, a tenant union organizer in Michigan can assure prospective strikers that they may have good defenses in an eviction action, that the landlord cannot make reprisals against them for certain actions and that, even if they lose the eviction suit, they cannot be evicted (if they pay the rent due plus costs). Organizers in other states cannot give these assurances. Because of this, other tactics must be used to supplement the rent strike as a means of putting pressure on landlords. Affirmative suits, picketing, publicity and even physically resisting evictions will play a more important role.

These tactics and the various factors to take into account when organizing low-income tenants are more thoroughly discussed in the Appendix to this article, which consists of excerpts from the Tenant Union Guide for Legal Services Attorneys.<sup>9</sup>

## Appendix

### Tenant Union Guide Legal Services Attornies

1. However, not every tenant organizer in Michigan is completely satisfied with the new legislation. See Glotta, *Tenant's Attorney: Evaluation of Impact*, 2 Prospectus 247 (December, 1968).
2. Mich. Comp. Laws § 554.139 (1) (1969 supp.).
3. Mich. Comp. Laws § 600.5637 (5) (b) (1969 Supp.).
4. Mich. Comp. Laws § 600.5646 (4).
5. See Ill. Rev. Stats., Chapt. 80 § 71; New Jersey Stats. Ann., § 2A: 170-92-1 (1969 Supp.); Gen. Laws of Mass., Chapt. 186, § 18 and Chapt. 239, § 2A.
6. Gen. Laws of Rhode Island, § 34-20-10.
7. Mich. Comp. Laws § 600.5673.
8. See, e.g., Penn. Stats. Ann., Title 68, § 250.504; New Jersey Stats. Ann., § 2A: 18-55; Vermont Stats. Ann., Title 12, § 4773; New York Real Property Actions and Proceedings Law § 751 (see also *Albany v. White*, 46 Misc. 2d 915, 261 N.Y.S. 2d 361 (N.Y. Cir. Ct. 1965)).
9. Prepared and reprinted with the permission of the National Housing and Development Law Project, Earl Warren Legal Institute, Berkeley, California. The Tenant Union Guide has been prepared especially for use by Legal Services attorneys. Further information is available from them upon request. Footnotes in the Appendix have been renumbered.

*The Tenant Union Guide has been prepared by the National Housing and Development Law Project, especially for use by Legal Services attorneys. The Guide discusses the following topics: 1) the role of the Legal Services attorney vis-a-vis tenants' groups, 2) the chances of success of a tenants' union, 3) obtaining the required factual information, 4) tactical and legal considerations in putting pressure on landlords, 5) conducting negotiations, 6) the structure of a collective bargaining agreement, and 7) further opportunities for the tenant union. The following excerpts are reprinted with the permission of the National Housing and Development Law Project, Earl Warren Legal Institute, Berkeley, California 94720. Additional information is available from them upon request.*

## Part I. An Overview

### A. The Problem

Legal Services attorneys representing low-income tenants are becoming increasingly frustrated. Since they began working in neighborhood offices, they have seen landlords charging too much rent for inadequate dwellings which landlords refuse to maintain properly. They have seen landlords mistreating tenants in various ways. Landlords refuse to return security deposits and often enter tenants' apartments without permission.

These attorneys have spent much time and effort attacking such problems. They have filed lawsuits, defended eviction cases, and reported violations of housing codes to health and building inspectors. The results have been minimal. A few landlords who were sued often enough may have improved their practices somewhat, but no dent has been made in the basic situation.

The reason for this is becoming clear. These attorneys have been attacking symptoms, not causes. When one stands back a few feet and looks at the situation for a moment, the causes become apparent.

First, in most cities, the demand for housing for low-income tenants far exceeds the supply. While inner-city populations are increasing from internal population growth and in-migration almost no new housing is being constructed there. In fact, urban renewal programs have been destroying much of this housing, without replacing it with new low-income housing. Nor is new housing for low-income people being produced outside of the slums, for poor people, especially blacks, are not wanted in middle-class neighborhoods. Once this is realized, the implications become obvious. First, we have a seller's market. Where this is so, no logical, humane, or legal arguments can overcome the fact that the seller (the landlord) has all the marbles. If the poor tenant does not like the way he is treated, he can easily be replaced

at the same rent. Second, the limited supply stems from the fact that the real "enemy" of the low-income tenant is not just the slumlord he and the Legal Services attorney can see, but also the people *outside* the slum who refuse to allow low-income housing to be built in their communities so that supply might come up to demand. This includes city councilmen and housing authority officials of surrounding suburban communities as well as Congressmen who refuse to appropriate adequate funds for construction of low-income housing.

The second cause, directly related to the first, is that the landlords and other "enemies" have substantial political influence while low-income tenants have essentially none. Health and building inspection departments are under-staffed, and the staff they do have are often unsympathetic to tenants and even, in some cases, corrupt. District attorneys refuse to prosecute housing code cases vigorously. Local public housing authorities refuse to build new units.

Landlord-tenant legislation in most states is heavily oriented in favor of the landlord. Why? Because the elected officials who appoint these people and enact these laws feel little or no real political pressure to respond to the needs of low-income tenants.

When these causes are recognized, the cure becomes clear. While middle-class liberal groups may be helpful allies in pressing for recognition of the rights of low-income tenants, the influence of these groups is limited and any significant economic and political influence must come from low-income tenants themselves. Some device must be found to organize low-income tenants into effective groups whose voices and votes will be heard by landlords, elected officials, and other people whose decisions affect the nature of the tenants' environment.

The device which will be discussed in this memorandum is the tenant union.

## B. The Tenant Union

A tenant union is analogous to a labor union. Workers suffered from an extremely poor bargaining position, lack of political influence, ineffective legal protection, and consequent low wages and poor working conditions. Today most workers have organized into unions which use the collective power of the workers to deal with employers from a position of strength and to exert substantial influence on local and national political bodies. The effect this has had on improving wages and working conditions is self-evident.

Hopefully, tenant unions can someday attain a similar position. We are certainly a long way from this degree of success, but the time is right for a push in this direction. The civil rights movement of the early 1960's and the federally sponsored poverty program (through its failures as well as its successes) have generated in the poor a feeling for the need for organization and collective action. The beginnings of tenant unions are now springing up in several large cities throughout the country. A National Conference on Tenants' Rights was held in January of 1969 in Chicago and brought together for the first time representatives of tenant groups from

around the country, and recently a Nationwide Tenants' Rights Program was set up by the American Friends Service Committee.<sup>1</sup>

Before exploring some of the larger political and economic impacts that tenant unions might eventually be able to make, let us examine what a group of tenants can do to improve conditions in *their own building* if they act collectively. First, they can force the landlord to meet their "non-money" demands. These involve arbitrary fines, and evictions without cause. Second, tenant groups can raise or capture capital to be used for improving the building or lowering the rents. This can be done by helping the landlord raise outside loan money at low interest and, where the landlord's profits are "excessive," capturing some of that profit money. Third, tenant unions can improve morale of the tenants by permitting them to become more involved in decisions affecting their environment. This will reduce expenses due to vandalism and lack of care for the property. By lowering these costs, more money is available to be captured for improvements or rent reductions.

At this point, it is essential that we emphasize that the tenant union approach is very difficult. It requires the patience of a saint and a certain measure of masochism, for the likelihood of failure in an individual situation is very high. Although tenant organization in any form has been rare, in those instances where it has happened the accomplishments have almost invariably been minimal. Tenants get upset about a particular problem, such as the landlord's failure to provide heat or to get rid of rats. They get together, stage a rent strike or set up a picket line at the landlord's home, and, in some cases, they will "win". What they "win" is the landlord's agreement to accede to *that particular demand*. The tenants do not ask for the right to deal with the landlord collectively on various matters on a regular basis, and therefore they do not get it. The boiler is fixed or the rats are poisoned and everybody goes home. When something else goes wrong, or when the boiler breaks down again next year, the landlord behaves as he always

did. Even where the tenants' group does have the foresight to demand a collective bargaining agreement—recognizing the group as the bargaining agent for tenants and granting tenants specific rights—the group usually fades away after this "victory" and the collective bargaining agreement is never really enforced.

What almost never happens is for the group to "subdue" the landlord while at the same time institutionalizing its gains and sustaining itself as a permanent organization to see that the gains are made as permanent as possible. Granted, something is gained even where groups spring up, obtain some specific gains and fade away. New leaders are trained and brought to the surface and the people begin to acquire a feeling for organization and what it can accomplish. But this is not enough and we should not be satisfied with it.

There are many reasons why these groups fail. There are many hurdles along the way, any one of which can trip them up and end the matter. These hurdles will be discussed in this memorandum in the hope that they can be handled. One of the major reasons for failure, however, is that everything is done on an *ad hoc* basis. There is no *planning*. Organizers may "select" the wrong leaders, the wrong tenants, or the wrong building, in effect starting with a situation where any significant success is next to impossible. Or, while the selection may be well-founded, there is no general vision of what the ultimate goals of the group are, and therefore the organizing proceeds in a way which makes it very unlikely that a lasting organization can emerge.

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## D. Need for a larger Organization

As it was indicated earlier, the problems facing the low-income tenant go way beyond those solvable by fighting the slum landlord. City and suburban politicians and state and federal officials lie at the heart of many of their problems. It is hard to imagine a group of tenants from one slum building attacking these centers of power in any significant way. They must *begin* their struggle against their landlord because he is the most *immediate and visible source* of their problems. A poor tenant cannot be organized to battle Congress, but he will challenge his landlord. Eventually, however, after "defeating" landlords and discovering how limited their accomplishments have been, groups of tenants will come to a level of sophistication where they can understand that they must take on some of these larger interests. This is beginning to happen in some cities, where tenant organizations with a good deal of experience have to begin to challenge urban renewal programs which do not provide for adequate relocation, public housing authorities which refuse to build new units on a non-segregated basis, and FHA offices which refuse to make loans to groups of low-income people for rehabilitation.

To reach this point, the tenant union must evolve into a larger organization, one which can bring together more poor people in the community who are interested in the many problems affecting them, police, schools, and employment matters as well as housing. This larger organization can bring pressure to bear on these larger problems, while at the same time, assisting smaller groups in the community to form and to grow.

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It has been found that even organization of tenants in individual buildings is very difficult without some neighborhood-wide or city-wide support group assisting the tenants.

Where this does not exist, serious problems are bound to arise. Tenants do not gain the benefit of the experience from past mistakes that others can offer. They do not get the moral support which is often essential to overcome their fears. Technical assistance and advice on legal, financial and other matters requiring professional expertise is harder to come by. Also, even if they get a collective bargaining agreement from the landlord, it is seldom enforced and the tenant union fades out of existence fairly quickly. This is partly because of normal tenant turnover, which means that "involved" tenants leave and are replaced by new tenants who did not take part in the struggle and have no sense of commitment to the tenants union or to the fulfillment of the provisions of the collective bargaining agreement.

A neighborhood-wide or city-wide organization can help overcome these problems. It can furnish moral and technical back-up. It can lend its broader influence and access to the press, city officials, and money to assist the tenant union, where appropriate. Most important, it has the continuity and stability necessary to assure that the fruits of victory are realized, i.e., that normal tenant turnover does not remove the watchdog needed to see that the terms of the collective bargaining agreement are obeyed.

Perhaps more importantly, the wider organization can furnish a vehicle for the tenant union and its members to become involved in exerting their newly established influence; collectively with other groups in the community, in matters going beyond its problems with the landlord. This includes not only housing, but schools, employment, consumer and police problems as well.

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## Part III

### At the Threshold of Organizing-Selecting Where to Become Involved

#### A. Introduction

As mentioned in Part I, organization must be done on a selective basis. Certain factors, to be discussed in this part, influence the degree of possible tenant union success so heavily that to ignore them would be to increase the likelihood of failure enormously, cause a wasted investment of time and resources, and raise illusory hopes in the people. These factors should be analyzed and understood before any major decisions are made. Even where, for some reason, you decide to become involved while knowing that the realistic goals are limited, you should understand these limitations beforehand so you can act accordingly.

The main factors to be considered are the condition of the building, the nature of the landlord, including both his economic position and his personality, and the types of tenants living in the building.

#### B. Condition of the Building

Three rough classifications of buildings by condition may be made.

##### 1. Standard Buildings

"Standard" buildings are those with few or no housing code violations. They are in some instances occupied by poor or lower-middle income tenants. The apartments may be small and tacky, but they are "legally" sound. The tenants may still be discontented, however, particularly over the rent level or new exorbitant rent increases, so the need for organization may be present in these buildings. Also, they might be upset over certain policies of the landlord, such as unannounced inspections or restrictions on decorating, planting gardens, or having pets.

The problem with organizing tenants in standard buildings is that the lack of housing code violations removes one of the important props from one of the most effective tactics which may be used against the landlord . . . . Often the only possible

defense to eviction suits brought because of a rent strike is the presence of substantial code violations (although this principle itself is not yet well established). Where tenants in a standard building stage a rent strike because of a rent increase (absent rent control legislation), they are very vulnerable to eviction actions.

Nevertheless, other tactics, such as picketing, might be used to organize these tenants, depending on their determination and the landlord's susceptibility to such tactics.

## 2. Substandard, "Tipping" Buildings

Such a building has housing code violations, but is not yet badly deteriorated. It is in the process of "tipping" from standard housing to badly deteriorated housing, a process which might go on for several years if it is not nipped in the bud.

Often such a building begins tipping because the landlord has either decided to "milk" the building or to cut back expenses in anticipation of a sale. Among the telltale signs that this is occurring are the landlord's increasing reluctance to act on tenants' complaints about needed repairs, a poorer job when repairs are finally done, and his postponement of overhauls on the building's major systems (heating, plumbing, etc.).

These clues should be looked for, because a tipping building should be one of the less difficult to organize. There is legitimate—and legal—cause for tenants to be concerned, since the landlord is violating the law. At the same time, there is some likelihood that the landlord is financially able to meet their demands. There may be several lower-middle or middle income tenants in the building who are familiar with the benefits of collective action (they may be labor union members). Also, they may be less fearful of an organizing effort, for they have the income to secure other housing and thus are not too dependent on this particular landlord (although they may have to be persuaded to stay and fight).

A building might be tipping because the neighborhood is tipping, and the landlord decides that further investment in the building will be

wasted because soon his more stable tenants will leave anyway, vandalism will increase, and the building's resale value will go down regardless of his expenditure on maintenance. This reinforces the need for a community-wide organization which can stimulate the organization of tenant unions throughout a neighborhood, so that these larger, downward trends can be halted.

## 3. Badly Deteriorated Buildings

In this type of housing tenants usually have many grievances and are sometimes angry at the landlord, and for that reason are less difficult to organize. The problem is that it is more difficult for the landlord to satisfy meaningful demands. Significant repairs are often financially not feasible, either for the landlord or for a tenant union which might take over the building . . . . Pressure for repairs which are too expensive might cause the landlord to sell or even abandon the building.

If this limitation is recognized, however, the tenants can make certain circumscribed demands and be organized on that basis. Certain repairs can be pressed for, as well as improved maintenance and better treatment generally.

## C. The Landlord

One of the crucial factors affecting the likelihood of successful organizing is the nature of the landlord. This includes what type of landlord he is, ranging from absentee-professional to the owner of a single building who also lives in one of the apartments. It includes the particular landlord's financial position in relation to the building, i.e., how much money he is making on it. It also includes the landlord's personality and attitudes, whether he is stable and rational or volatile and emotional.

### 1. Types of Landlords

Landlords in slum neighborhoods can be divided into three general categories, each category reflecting differences in financial resources, management style, and likely responses to tenant organizing.

#### a. Absentee-Professional

The absentee-professional landlord may be a wealthy individual, a corporation, or a syndicate (a group of several investors, often wealthy). This landlord owns many buildings, in the slum and perhaps also out of the slum.

Organizing tenants against such a landlord may be difficult, but the rewards may be worth the effort.

This landlord has income coming in from many buildings, so he has a large capacity to resist. A rent strike in only a few of his buildings will not make it impossible for him to meet his mortgage payments. He has the money to hire good attorneys and pay them to do a thorough job. Also, he often has substantial influence on local elected officials, city agencies, newspapers and other resources affecting a tenant organizing drive. Perhaps most important, he may have had experience with tenants organizing and be clever enough to put what he has learned to his good advantage.

Other factors, however, tend to increase both the likelihood and potential fruits of success. This landlord is usually more open to rational economic argument (although there have been dramatic exceptions). If it makes economic sense to sign a collective bargaining agreement rather than endure a prolonged rent strike, he may give in instead of blindly fighting the tenants to protect his "principles." Because he is more likely to be in the public eye, both professionally and socially, he may be more vulnerable to bad publicity. The "slumlord" image may hurt his relations with his business associates, customers, and friends. Where his slum buildings are only a small fraction of his holdings, he would seem to be particularly vulnerable to this approach.

The attractive aspect of organizing against the absentee-professional is that he, more than any other landlord, has the financial resources to meet the tenants demands for repairs. He either has the money or has the good credit and influence to be able to get it. This gives the tenants a goal which is very meaningful while still realistic.



### b. Absentee-“Amateur”

The absentee-“amateur” landlord does not live in the building, but his holdings are few, generally one or two buildings.

Because his experience in managing property is more limited, he tends to be less of a professional businessman and less open to rational economic persuasion. He may be more likely to “stand on his principles” and stubbornly resist tenant groups who are threatening his “property rights.” Or, he may become frightened and give in to the tenants more readily than he has to, fearing a plot involving some extreme action.

These are generalizations, of course, but they are more likely to occur with this type of landlord than with the absentee-professional.

The absentee-amateur often has high mortgage payments and little resources with which to combat the organizing effort. A short rent strike may make it difficult for him to meet his payments, and he cannot afford many lawsuits if they will involve long court battles.

This lack of resources, however, is also the main problem with organizing against this landlord. He often has neither the money nor the access to money for sizeable repairs. Where this is the case, the tenant union will either have to limit its goals or find some way to assist him in procuring more money or take over the building itself . . . .

### c. Owner-Occupants

In most cases, there is little reason to organize “against” the owner-occupant. Because he lives in the building himself, he usually does his best—within the limits of his resources—to properly maintain and repair the building. He wants good relations with his tenants, since he must live with them. The impact of this productive attitude on low-income housing is a key reason why tenant unions should be interested in taking control of such buildings, through ownership or some other device . . . .

The main problem with owner-occupied buildings is that the landlord has very little ability to get the money

needed for substantial repairs. A well-established tenant union, however, can work with him to help him obtain this money . . . .

### 2. The Landlord’s Profit

In order to assess properly a particular landlord’s susceptibility to tenant organizing and his ability to meet their more costly demands, you should get some idea of his profit picture with regard to the building.

#### [Editors note:]

*Analysis of the landlord’s financial interest should include the following elements: (a) Capital investment. Prices in slum areas may be inflated because low maintenance expense allows a large portion of gross rents to result in landlord’s profit. In states where there are usury laws, slum properties may be sold for inflated prices so that an effective return higher than the legal limit can be derived from a high risk loan. (b) Mortgage terms. Monthly payments may be high because only low-ratio, short-term financing is available. In some areas, banks may refuse to make mortgage loans altogether. (c) Sources of profit. Rents, depreciation tax advantage, and capital gains are all important.*

*A useful discussion of the financial picture of slum landlords can be found in The Tenement Landlord by George Sternlieb (Rutgers U. Press, 1969) and in the completed Tenant Union Guide.*

. . . .

### 3. The Landlord’s Personality

The personality and attitudes of the landlord may be an important factor in determining whether his tenants[ can be organized and what they can obtain. On the one hand, an eccentric, somewhat irrational landlord will be easier to organize against, since he will have done things which have made the tenants angry, and he will continue to do so. The problem is that his unreliable behavior may well continue after the tenants’ “victory,” making it difficult to actually obtain the needed repairs and a smoother landlord-tenant relationship. On the other hand, a rational landlord who is carefully concerned about his profits may be clever enough to resist organizing, but if he comes to agreement with the tenant union he may be more dependable thereafter.

You may also want to discover and take into account the landlord’s attitudes toward minority groups, people on welfare, being considered a “slumlord,” tenants with children, and organizing—will he think the tenant union is Communist-inspired?

### D. The Tenants

The nature of the tenantry in a building should be examined to determine if they are “good material” for organization.

The number of tenants may have some effect on this. Generally a large building is better. In a small building with perhaps only eight tenants, only five or six may be active tenant union members, and of these two or three may be the mainstays. If one or two of these move out (for any of a variety of reasons) during the struggle, the movement may be decimated. In a large building, however, where 30 out of 50 tenants may be active, the loss of two or three might be absorbed.

The stability of the tenants is very important. If they tend to be transient, organizing is very difficult. Such tenants have no stake in the building and cannot be relied upon. As a general rule, large families tend to be more stable than single people or couples.

The ethnic composition of a building might in some cases be significant. If it is mixed, there might be subtle animosities between the races which may come to the surface when difficulties arise in the organizing process.

Finally, the success or failure of an organizing effort in many cases will turn on how effective the leaders are. If a building contains a few intelligent well-respected potential leaders who get along with each other, a large part of the organizing problem is solved before you start. If, on the other hand, there are no people who meet these qualifications, success will be difficult to achieve even if the other circumstances are favorable.

### E. Small Towns and Rural Areas

The preceding discussion in this chapter is based largely on the assumption that poor tenants live in multi-unit buildings. This is the case in the urban centers on the Eastern seaboard and in the Midwest, where most tenant union activity to date has taken place. However, in small towns and rural areas and even in some large cities—particularly in the South and the Far West—most poor tenants live in small single family dwellings.

Where this is the situation, organizing tenant unions is much more difficult. Tenants in a 20 unit building know each other, face much the same problems regarding the condition of the building and their individual apartments, and are generally dealt with by the landlord in pretty much the same way. Where tenants live in single family dwellings, however, these factors tend to be missing.

Nevertheless, these obstacles can be overcome, although it will take more effort. Organizers must actively contact tenants and bring them together. This can be done either by grouping together all of the tenants of the same landlord or on a street or block basis. It is probably best to go after the largest and most notorious landlord first. If his tenants can be successfully organized, then the way will be paved for future organizing against other landlords.

Another possible starting point is public housing. In many small towns and rural areas, the only concentration

of multi-unit housing for poor people is public housing. If organizing begins in public housing, a strong group may emerge which can later spread into private low-income housing in the community.

### F. FHA Insured Projects

The potential for organizing tenants may be enhanced when the financing of a building has been insured by the Federal Housing Administration (FHA). There is a greater prospect of bringing lawsuits against the landlord and even the federal government because of this. Because the project is publicly assisted and regulated, tenants may benefit from constitutional, statutory, and regulatory provisions not applicable to conventionally financed public housing.

Fourteenth Amendment due process protections in admissions and evictions have been upheld for FHA tenants. Due process arguments are also being used as a basis for a suit to reform an onerous lease in an FHA insured building. FHA regulations and the Administrative Procedure Act are being invoked in behalf of FHA tenants to demand a right to a hearing on rent increases before the rent increases can be applied.

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## V. The Organizing Process

### A. Introduction

Before beginning, several important points should be noted.

#### 1. Choose Your Goals.

The organizers must first decide what their goals are. Hopefully, their primary goal will be recognition of the Union by the landlord and his agreement to deal with it as representative of the tenants on a continuing basis or to sell the building to the Union. In some cases, however, they may want or have to settle for something less, some short-term benefits such as specific repairs or cancellation of a rent raise. Whatever goals are chosen, they should be recognized because they will influence what tactics will be most appropriate.

#### 2. Organize All Buildings.

Some unions have found that in order to successfully force a landlord to come to terms, the tenants in most or all of his buildings must be organized. This is particularly true where, for various reasons, the rent strike is the only effective weapon available. Where only one of several buildings is struck, the landlord has a steady income from his other buildings which gives him time to outlast the Union or develop his own tactics (including lawsuits) to break down the unity of the tenants.

Some thought might be given to organizing on a block basis rather than a landlord basis. Organize all buildings on the block, regardless of who the landlords are. This can help overcome the problem of trying to organize and effectively rehabilitate one building in a run-down neighborhood, where the neighborhood is degenerating so steadily that it is difficult for one isolated building to stay rehabilitated. Organizing an entire block can help improve the whole neighborhood. Also, people on the same block tend to know each other and perhaps morale can be brought up to the point where effective organizing and rehabilitation may be possible.

Because of the diversity of landlords and tenants on an entire block, however, the resources necessary to organize on a block basis will be much larger than those needed to organize on a landlord basis.

### 3. Management Companies.

Where the building is operated by a professional management company, success might be very difficult to achieve. The management company simply is not the "real party in interest." All it has to lose is its management fee, generally 5% or 10% of gross rentals. Since it manages many buildings, it can easily afford this loss. Therefore, it is difficult to compel a management company to sign a collective bargaining agreement. It will drop its contract with the owner first, leaving the union to start all over against the real owner. However, some experience has shown that the battle that then takes place with the real owner is not much of a problem. The owner has probably used a management company in the first place because, for one of a number of reasons, he does not want to become involved in the management of the building. Therefore, after he has seen how the tenant union has put enough pressure on the management company to scare it off, he may come to terms quite quickly rather than personally face a long drawn out struggle with the tenant union.

## B. Creating a Receptive Climate for Organizing

Organizers, particularly those associated with neighborhood-wide or city-wide organizations, can lay a good foundation in advance for organizing by publicizing slum conditions and the names of slumlords in the area and the efforts of the organizers to attack these problems. The object is to create a climate of awareness and interest in tenants and potential allies that makes the organizing effort easier. When organizers enter a building, at least some of the tenants will already have heard of the organizing effort and will more readily trust the organizer. Such publicity can take the form of newspaper stories, announcements and

speeches to local churches and other community groups, and informal contacts with "grass-roots" leaders in the community.

## C. Setting Up the Tenant Organization

### 1. Introduction.

In setting up a tenant organization, the organizers and the lawyer have work to do and decisions to make. A name must be chosen, a slate of officers must be elected, by-laws must be drawn up. In this section we will discuss the legal form of the tenant organization. Should it remain an unincorporated association or should it incorporate?

### 2. Unincorporated Association.

If the tenant union does not incorporate, it will be considered an unincorporated association.

At common law an unincorporated association was not a legal entity and therefore could not sue or be sued or hold property.<sup>2</sup> Today, most states have changed this by statute,<sup>3</sup> thereby enabling the group to conduct its business through its officers. Be sure to check your state's law on this.

The key problem with not incorporating is potential liability of the members for acts of the leaders. Whether individual members and officers of an unincorporated association can be held liable for the acts of their fellows will hinge on a finding of individual participation of one sort or another, for the most part based on agency theories of express or implied consent, authorization, and ratification. Generally, each member of the association will be fully liable on every contract which the officers make within their authority, or which the member later assents to or ratifies. Also, each member is fully liable for all torts committed by the association within the purposes for which it is formed and for torts of employees acting within the scope of their employment.<sup>4</sup>

Certain precautions can be taken to cut down on this problem. For contracts, the number of persons allowed to sign for credit purchases

can be restricted, and an agreement can be made with each creditor that he will look only to the assets of the tenant union for payment, and not to the individual members. For torts, the union should make sure that all persons who drive an automobile on union business have liability insurance. If the union maintains an office, it should obtain liability insurance for accidents which might occur there. Insurance cannot be obtained for intentional torts, however, so there is always the remote possibility of liability for individual members (for example, if they are sued for engaging in an illegal boycott).

### 3. Non-Profit Corporation.

Forming a non-profit corporation simplifies these matters. The corporation can hold property, make contracts, and sue and be sued in its own name. The individual members are protected from liability. (If the corporation has substantial assets, however, it is still a good idea to make sure these assets are protected by adequate liability insurance.)

The lawyer's task of putting together the corporation is not difficult. Check your state statutes on this, and call your local Corporation Commissioner's office for details. Generally you must write the Articles of Incorporation, which requires only general information. Sometimes the state supplies forms for these articles. Since the corporation is non-profit, the filing fee is small, from \$5 to \$50. Some states also require submission of a simple annual report or the keeping of certain basic records.

### 4. Federal Income Tax Considerations.

It is unlikely that an incorporated tenant union will have any taxable income. First, its main source of funds—membership dues—should be considered contributions to capital rather than income. Second, other income (from cake sales, for example) should be spent and thereby offset by expenses before the end of the tax year.

Even if the corporation does have some taxable income, it should qualify as a tax-exempt organization under Internal Revenue Code Section 501.

Subsection (4) exempts "Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare . . . ." In *Garden Homes Co. v. Comm.*,<sup>5</sup> this exemption was allowed to a limited dividend corporation whose purpose was to furnish at cost much-needed homes for working men. The tenant union's purpose is similar. Also, see several Revenue Rulings which allow exemptions under this subsection to organizations helping low-income people.<sup>6</sup> Although an organization may be exempt under this subsection while devoting a substantial part of its activities to influencing legislation, it loses the exemption if it backs or opposes candidates for public office.<sup>7</sup>

You might also consider applying for an exemption under Subsection (7), social clubs. Also, if any sizable donations to the tenant union are expected, you might seek an exemption under Subsection (3). This will permit the donor to deduct the gift as a charitable one, although it will also limit the group's ability to engage in legislative matters without losing its exemption.

Even though incorporating the tenant union may cause no tax liability, it will impose the burden of filing an income tax return on the group, whether or not it has any income.<sup>8</sup>

If the tenant union does *not* incorporate, then any income it receives is considered income to the members, and each member must treat a pro rata portion of it as income.<sup>9</sup>

### 5. Recommendations.

During the organizing stage, the tenant union will own little property and make few contracts. The risks of liability will be small, and these can be further minimized by taking the precautions mentioned above under Unincorporated Associations. Incorporating will require filing tax returns and perhaps obtaining an exemption, and it might also mean complying with state reporting

requirements for non-profit corporations. During this stage, the organization is simply not set up to handle these burdens very easily.

Hopefully, however, the tenant union will become larger and take on more responsibility. It may employ several people, own automobiles, own buildings, and purchase supplies and employ contractors. When and if this stage is reached, the group should be incorporated in order to protect the members from liability and to facilitate the transaction of business.

### D. Reporting Housing Code Violations-Retaliatory Evictions

At the earliest feasible moment, the tenant organization should consider an effort to report possible housing code violations in the building to the city agency responsible for housing code enforcement.

Reporting housing code violations can be useful for several purposes.

First, reporting such violations establishes a record that the tenants are really concerned about the condition of the building so it does not appear later—when they are publicly struggling with the landlord through picketing or a rent strike—that they are creating this issue for ulterior motives, such as keeping the rent money. This can be helpful in gaining public support. It can also be influential in court, should the landlord attempt to enjoin picketing or bring eviction actions.

Second, to the extent that reporting results in inspections by city housing or building inspectors, it builds up a record of actual violations. As these inspectors are neutral parties in the dispute and because of their expertise in the field, their word carries much weight. If state law permits partial or complete rent abatement where substantial housing code violations are present (see Section F, Rent Strikes), their testimony as to violations will be extremely persuasive, if not conclusive. This record of violations might also be useful for publicity purposes.

Third, reporting will probably result in inspection but not in correction of the violations by the landlord. The city agency might cite the landlord and order him to repair, but it may grant him extensions,

compromise on the number of violations to be corrected, and, in any event, not carry the case to its proper remedy, criminal prosecution (which is usually not effective anyway, because of lax prosecution and light penalties). This failure on the part of the city agency tends to teach the tenants that they cannot rely on the benevolence of outside agencies to enforce their rights and that they can accomplish their aims only through their own collective assertion of power.

There are, however, two serious dangers to consider before you decide to report code violations.

First is the possibility that you will get *too much* response from the city agency. If the building is in very bad shape, the agency may condemn it, order the tenants to vacate and order the building demolished. This obviously leaves the tenants in a worse situation, as well as the landlord. Even if demolition is not a serious risk, the agency could discover violations which the tenants had not noticed and do not care about and which cost a good deal to correct, such as a foundation being too low. If the agency presses the landlord to make such a repair, this weakens the landlord's financial position with regard to the building and impairs his ability to make the repairs the tenants want. Also, if the tenant organization contemplated buying the building, it will now also have to contemplate having the agency's order apply to the organization as new owner.

Therefore, it is wise to try to get some sense of what the agency's response will be before deciding to report code violations. Talk with inspectors and even the director of the agency about their policies and attitudes. There may be ways of minimizing these risks, such as reporting health problems (e.g., rat infestation) only to the city health department, which may limit its inspections to health problems.

The second potential danger from reporting code violations is that the landlord will attempt to retaliate against the tenants reporting such violations by evicting them. This threat can be fought by the collective action of the tenants through whatever means are most appropriate, such as rent strike or picketing. Such

retaliatory action against one of their members may be just the thing to rouse them into action. If such a response is premature (the tenants not being well enough organized yet), then these eviction actions might be defended in court under the doctrine that eviction for such a purpose is contrary to public policy and/or is unconstitutional. While not yet firmly established, this doctrine is gaining wider acceptance by the courts. For a description of the current state of the law on this doctrine in the various states, and some suggestions as to how to prove your case, see Moskovitz, *Retaliatory Evictions—The Law and the Facts*, Clearinghouse Review, May, 1969, p. 4, reprinted in Chapter III of Landlord-Tenant Materials.

## E. Picketing

Picketing can be one of the key weapons in a tenant union's arsenal, both for organizing the tenants and for putting pressure on the landlord.

Picketing usually takes place at one of three locations.

First is the building itself. Picketing at the building involves no travel time or expense, so it is easy to get tenants out to picket. Also, it is a very good organizational technique, since other tenants see the pickets and other people in the neighborhood also see what is happening. In terms of pressure on the landlord, however, the benefits are limited. If he is trying to sell the building, prospective buyers may be deterred by the picket line, and in this situation picketing may be a good pressure tactic. Another variation on picketing at the building is to put signs in the windows of the tenants' apartments in the building . . .

The second place to picket is the landlord's business, thus bringing economic pressure to bear on him by persuading his customers to stay away. This may be particularly effective where the landlord is a rental agent or management company.

The third possible location, currently becoming very popular, is the landlord's residence. This can be especially effective where the landlord lives in an all white suburban neighborhood and all of the tenants are black.

Be sure to contact all local news media, including television stations, before picketing. Landlords do not like to be identified in newspapers or television as slumlords.

Picketing can involve a very complex set of legal problems, which you should examine before advising any tenant group. These problems are discussed in Chapter VI of the Landlord-Tenant Materials.

## F. The Rent Strike

### 1. Introduction.

The rent strike is usually the tenant union's strongest weapon, as it brings direct and immediate economic pressure to bear on the landlord. Few landlords are able to pay mortgage and property tax payments and other non-deferrable expenses from sources outside rents for long. If a landlord cannot "break" the rent strike quickly, he must come to the bargaining table.

In this section, we are assuming at all times that the building on strike contains substantial housing code violations.

### 2. The Lawyer's Role.

The attorney has two vital roles to play in a rent strike.

First, he must advise the people as to what they can legally do and how to do it. The key problem here is that in most states, there are neither statutes nor cases directly holding that a tenant may stay on the premises and withhold his rent because of substantial housing code violations. . . .

[H]owever, there is a good body of precedent from different fields of the law which would justify a court in making such a holding. In most jurisdictions, this issue will have to be raised as a "test case." While a lawyer may well understand the uncertainty this involves, the situation is very difficult to communicate to laymen, especially those who may be poorly-educated and frightened of the law, which has usually been used against them. At this point, they want to be given definite answers, not uncertainties. The lawyer is obligated

to tell the tenants that they might be evicted if they withhold rent, but if he does so too strongly he may frighten them off. The best he can do is to tell them that they had better be prepared for the possibility of eviction, but there is good chance that a court will accept their defense and he will do his best to persuade it to do so.

Second, of course, the lawyer must be prepared to defend eviction cases if they are filed. He must do everything he can to prevent any evictions from occurring during the strike. If one tenant is evicted, morale will probably suffer so badly that the strike will end. The lawyer should use [all possible legal] defenses, . . . and also use whatever ethical tactics can be used to keep the tenants in possession as long as possible.

### 3. Strategies—Escrow Accounts.

Since the purpose is to force the landlord to bargain by bringing maximum economic pressure to bear on him, a large degree of tenant participation is crucial. As a general rule, success will be unlikely unless at least one-third of the tenants begin to strike at one time. After seeing this, other tenants will join in later. This is also important as a morale factor, since striking tenants who know they are a small minority will have less courage to go on.

It is commonly thought that tenants on rent strike *must* pay their rent into an "escrow" account, to be paid to the landlord if and when he brings the building up to code. This is not so. Although payment into court is required under some statutory procedures, such as those in Pennsylvania and New York, if rent withholding is permitted under the common law arguments presented in the Model Points and Authorities, tenants simply have no obligation to pay rent. No "escrow" is required, the tenants may keep the money (although there is a remote possibility they could later be held liable for some portion of the rent on an unjust enrichment theory).

(It should be noted that the use of the word “escrow” here is a convenient misnomer. “Escrow” means the holding of money by an impartial third party who has the duty of giving it to one of the parties on the happening of certain conditions. As the tenant organization is not impartial, it is not a true “escrow.” Nevertheless, the term is used and should be used, because of the aura of legality it gives the strike.)

Establishing *no* escrow account certainly has its advantages. First of all, it will make recruiting easier, since the tenants who strike will have that much more pocket money. Second, it puts more pressure on the landlord, for even if he will win his eviction suits, he knows that the lost rent money will be gone forever (assuming the tenants are “judgment-proof”) and he will lose more as each month goes by. Third, it obviates the difficult “policing” problems which inevitably come up when a tenant organization tries to collect the rent, forcing the organizers and the leaders to crack down on the members. This puts strains on the organization.

Nevertheless, it may be better to have the tenants pay their rent into escrow. This can impress a court—and the public—that the tenants sincerely want their building repaired and are not just trying to keep their rent money. Second, it can create a fund to be used for rehabilitation if and when the landlord signs an agreement. Third, it keeps the tenants in the habit of

paying rent. If they do not pay rent, their spending habits and attitudes may change and it may be more difficult to get them to begin paying rent again after an agreement is signed, particularly if repairs cannot be started right away. Fourth, the work involved in collecting the rent and putting it into an escrow account can help keep the organization together by giving the people something to do together instead of just sitting back and watching. Finally, the money in escrow might be very useful in court. Some states allow payment of rent *after judgment* to avoid eviction. If you have the money in escrow available for this, the tenants can be assured that they will not be evicted for non-payment. Also, if you lose in the trial court and appeal, you will want a stay of execution during the appeal. To get this, you will probably have to put up an appeal bond, and you will need the escrow money for the bond.

If an escrow account is set up for these reasons, the tenant organization must impress on the tenants the need to pay rent regularly into the account and it must see that the rents are paid into it.

The account may be set up in a bank savings account. For withdrawals, both the signature of the tenant organization leader and the individual tenant should be required.

(If the bank will not allow this in one large account, use a separate account for each tenant.) This has two benefits. First, it assures each tenant that his money cannot be disposed of without his consent, so he feels safer in joining the strike. Second, if only the leader’s signature were required, the landlord might sue him to compel him to sign the money over to the landlord. With the signature of each tenant required, however, the leader could not comply with such an order. The landlord must also sue and serve each tenant, which might be very difficult.

The landlord might try to bring a suit in equity to grab the money in escrow. This was attempted in *Dorfmann v. Boozer*, 38 Law Week 2004 (D.C. Cir., 1969). Tenants on rent strike deposited their rents with Credit Union. The rent money could be withdrawn by the tenant only on his signature and the signatures of two of the three Tenants Union officers. The landlord sued for an accounting of the money, and obtained a preliminary injunction compelling the Credit Union to pay the money into court for disbursement to the landlord. The Court of Appeals reversed, holding that a suit in equity would not lie because the landlord’s remedy at law was adequate and exclusive. He could have used the District of Columbia summary ejectment and attachment procedures.

Where attachment of the account is seen as a possibility, this may be made more difficult by depositing the money in a bank in another jurisdiction.

1. 711 14th St., N. W., Washington, D. C. 20005, Anthony R. Henry, director.

2. See generally 7 C.J. S., Associations, § § 14, 15.

3. See, e.g., Calif. Corp. Code § § 21100, 21200.

4. See 7 C. J. S., Associations, § 32 Ford, Unincorporated Non-Profit Associations (1959), p. 50 et seq.; Witmar, *Trade Union Liability: The Problem of the Unincorporated Corporation*, 51 Yale L. J. 40, 62 (1941); and Comment, *Liability of Members and Officers of Nonprofit Unincorporated Associations for Contracts and Torts*, 42 Calif. L. Rev. 812.

5. 64 F.2d 593 (7th Cir., 1933).

6. Rev. Rul. 55-439, 1955-2 CB 257; Rev. Rul. 67-294, 1967-2 CB 193.

7. Reg. § 1.501 (c)(4)-1(a)(2)(ii).

8. IRC § § 6012, 6033. A tenant union which does not incorporate might also be required to file a return.

9. It should be noted that in unusual circumstances, an unincorporated association may be taxed as a corporation, if its characteristics resemble those of a corporation. Reg. § 301.7701-2(a).

## G. Affirmative Suits

As has been indicated earlier, the attorney should be very careful about using affirmative suits against a landlord to help the Tenant Union. This can weaken the group by inducing them to rely too heavily on the lawyer and the lawsuit.

Where the group will not be weakened, however, affirmative lawsuits against the landlord can be very effective in putting pressure upon him. For a change, he is on the defensive, and psychologically this can give quite an effect. He will have to put out substantial attorney's fees if you use your procedural rights to the fullest. If you ask for substantial money damages, including punitive damages, this will also effect the landlord psychologically, regardless of the likelihood of recovering such damages. Despite his attorney's assurances, a layman does not like to go to sleep at night with a \$100,000 complaint filed against him. Third, if you ask for punitive damages, you are entitled to discover the landlord's entire financial position, something he would probably not be anxious to reveal. Also, you can take his deposition, for which he will have to appear and answer some questions which may make him uncomfortable. Finally, temporary restraining orders and preliminary injunctions may be obtained to keep your clients in the building while the suit is pending.

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